

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
                            )    Criminal Nos.: 05-30010-MAP  
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V.                         )  
                            )  
                            )  
LEE HENRY,                 )  
                            )  
Defendant                 )

IN CLERK'S OFFICE  
FILED  
JUL 15 P 1:54 PM '05  
U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

**MOTION TO SUPPRESS EVIDENCE**

NOW COMES the defendant, Lee Henry, through counsel, and respectfully moves this Honorable Court for an order that all evidence, oral or tangible, obtained directly or indirectly from the search and seizure of property from the defendant's person and from a 1997 Ford Expedition, be suppressed from use at trial of the above-numbered indictments, said search and seizure being in violation of the defendant's rights under the Fourth Amendment to the United States Constitution.

As grounds for this motion, counsel states as follows:

1. The defendant is charged in a two-count indictment alleging violations of 21 U.S.C., section 841 (a)(1), Distribution and Possession with Intent to Distribute Heroin and 18 U.S.C., section 401 (3), Contempt of Court.

2. On November 1, 2003 at about 5:25 p.m., Springfield Police Officers arrested the defendant outside of 80 Catharine Street, Springfield, Massachusetts. Said arrest was allegedly based upon a "Be on the lookout" for the defendant given by members of the Springfield Police Department Detective Bureau and in addition upon information from the National Crime Information Center (NCIC) database that there existed an FBI warrant for the defendant's arrest.
3. Upon the defendant's arrest, Springfield Police Officers searched the defendant's person. The Government alleges that, as a result of the search, the police officers seized a packet of small wax paper envelopes containing a whitish powder, which is believed to be heroin. In addition, Springfield Police Officers searched the 1997 Ford Expedition that the defendant was driving at the time of his arrest. The Government alleges that, as a result of the search of the motor vehicle, ten additional bags of heroin were seized.
4. The arrest warrant upon which the police officers based their stop and subsequent seizure of the defendant was issued on or about October 23, 2003 based upon a court proceeding in the United States District Court for the District of Massachusetts,

Docket number 03-30043-MAP, for failure to appear at a court hearing. On October 29, 2003, the defendant surrendered himself on said warrant and was subsequently released on conditions of release ordered by the Court. At the time of the defendant's arrest on November 1, 2003, the information concerning the outstanding warrant had not been removed by law enforcement from the database of the NCIC.

5. Said arrest and seizure were unlawful due to the fact that the police officers relied solely on a stale warrant to effect the defendant's arrest and subsequent search of his person and vehicle and seizure of narcotics.

WHEREFORE, the defendant respectfully prays that this Honorable Court order the suppression of all evidence resulting from the official illegality alleged herein.

THE DEFENDANT

by   
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